

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION

ALVION PROPERTIES, INC., et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	NO. 3:08-0866
	)	Judge Trauger/Bryant
BERND H. WEBER, et al.,	)	<b>Jury Demand</b>
	)	
Defendants.	)	

**TO: The Honorable Aleta A. Trauger**

**REPORT AND RECOMMENDATION**

Pending in this case is Plaintiffs' Motion For Relief And/Or Reconsideration Of Plaintiffs' Amended Motion For Entry Of Final Default Judgment (Docket Entry No. 255).

This motion has been referred to the undersigned Magistrate Judge for report and recommendation (Docket Entry No. 85).

For the reasons stated below, the undersigned Magistrate Judge recommends that plaintiffs' motion for relief and/or reconsideration be denied as moot.

**Procedural Background**

Plaintiffs on October 15, 2009, filed their amended motion for entry of final default judgment (Docket Entry No. 173). By this motion, plaintiffs sought entry of a final default judgment against defendants American Gulf Finance Corp., Alvion Partners, LLC, AGF Realty Solutions, Inc. and TimeData Holdings, LLC (collectively called the "Entity Defendants"). As grounds for this

motion, plaintiffs asserted that none of these defendants had filed answers or other response to the complaint and that the Clerk on February 9, 2009, had entered default against them (Docket Entry No. 108). In their motion, plaintiffs sought entry of final default judgment for certain injunctive relief as well as attorneys fees and costs against the Entity Defendants.

Thereafter, and before the Court ruled on their amended motion for default judgment, plaintiffs filed the instant motion entitled "Motion For Relief And/Or Reconsideration Of Plaintiffs' Amended Motion For Entry Of Final Default Judgment" (Docket Entry No. 255). This motion, which is accompanied by a number of documentary exhibits, consists of a lengthy recitation of factual allegations of the plaintiffs in this case.

On September 9, 2010, the undersigned Magistrate Judge filed a report and recommendation that recommended, for the reasons stated therein, that plaintiffs' amended motion for default judgment (Docket Entry No. 173) be denied without prejudice to plaintiffs' right to file a similar motion following a hearing on the merits of the remaining claims. In preparing this report and recommendation, the undersigned Magistrate Judge failed to appreciate that the instant motion, entitled a "motion for relief and/or reconsideration," was actually a supplemental memorandum in support of plaintiffs' amended motion for final default judgment.

On September 30, 2010, the District Judge accepted this report and recommendation and denied without prejudice plaintiffs' amended motion for default judgment (Docket Entry No. 310).

The undersigned Magistrate Judge has reviewed and considered plaintiffs' motion for relief and/or reconsideration (Docket Entry No. 255) and finds that it contains no further evidence or argument that would cause the undersigned Magistrate Judge to reconsider or alter the previously filed and adopted report and recommendation regarding Docket Entry No. 173.

For the reasons stated above, to the extent that plaintiffs' motion for relief and/or reconsideration (Docket Entry No. 255) is a separate motion as contrasted to a supplemental memorandum in support of plaintiffs' amended motion for entry of final default judgment (Docket Entry No. 173), the undersigned Magistrate Judge finds that such motion should be denied as moot.

#### **RECOMMENDATION**

For the reasons stated above, the undersigned Magistrate Judge **RECOMMENDS** that Plaintiffs' Motion For Relief And/Or Reconsideration Of Plaintiffs' Amended Motion For Entry Of Final Default Judgment (Docket Entry No. 255) be **DENIED** as moot.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14) days from service of this Report and Recommendation in which to file any written objections to this Recommendation, with the District Court. Any party opposing said

objections shall have fourteen (14) days from receipt of any objections filed in this Report in which to file any responses to said objections. Failure to file specific objections within fourteen (14) days of receipt of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. Thomas v. Arn, 474 U.S. 140 (1985), reh'g denied, 474 U.S. 1111 (1986).

**ENTERED** this 3rd day of February 2011.

s/ John S. Bryant  
JOHN S. BRYANT  
United States Magistrate Judge